

ISSUE 11: IF THE ANSWER TO ISSUE 10 IS YES, WERE THE 94TH DIV REVIEWERS AND/OR THE APPROVING AUTHORITY AWARE THAT THE DRAFT BOOK CONTAINED CLASSIFIED INFORMATION THAT WAS NOT APPROVED FOR RELEASE BY APPROPRIATE AUTHORITIES? IF SO, BE SURE TO ADDRESS THE FOLLOWING:

ISSUE 11A: IDENTIFY EACH REVIEWER AND/OR APPROVER WHO WAS AWARE OF SUCH FACT.

FINDING 11A: The 94th DIV Staff Judge Advocate (SJA), (b) (6), and the 94th DIV Assistant Division Commander (ADC), (b) (6), both reviewed (b) (6) draft book before it was published. However, despite the fact that both officers had "concerns" regarding the manuscript, which (b) (6), neither officer actually knew that (b) (6) draft book contained classified information at the time they issued their respective memoranda regarding the book.

ANALYSIS 11A: None of the evidence gathered during the investigation indicates that either (b) (6) or (b) (6) actually knew¹ that (b) (6) draft book contained classified information at the time they issued their respective memoranda regarding the book.² In fact, (b) (6) assured both officers that the manuscript contained only unclassified information from "open sources," and they believed (b) (6) (Exhibit 86, pp. 54, 58, 75, 84, 97-100, 108, and 113-114; Exhibit 150, p. 48; Exhibit 79, pp. 19, 54, 56, 79-80, 92, and 101; Exhibit 111, p. 28). Nevertheless, as discussed more fully in the response to Issue 11D, below, there is ample evidence to suggest that (b) (6) and (b) (6) were both concerned that the draft book might contain classified information (Exhibit 86, pp. 50, 54-68, 74-75, 84, 101-102, 104, 113-114, and

¹ Both (b) (6) and (b) (6) learned that (b) (6) draft book actually contained classified information following the Defense Intelligence Agency's review of the manuscript (Exhibit 86, pp. 69-72; Exhibit 111, p. 23).

² (b) (6) issued a legal review on 26 December 2009, which stated, in part:

(b) (5), (b) (6)

(Exhibit 171). (b) (6) then issued a MFR on 4 January 2010, in which he indicated that he had read the manuscript "to conduct an initial OPSEC/Security Scan and review for ethical standards," and stated that he "found no obvious security or legal issues in the DRAFT manuscript," "interpose[d] no objection on legal or operational security grounds for publication of (b) (6) book," and found the book "sufficient for publication" (Exhibit 151).

³ (b) (6) described (b) (6) "concerns" as follows:

(b) (6)

120-130; Exhibit 79, pp. 19, 44, 73-74, and 110-111; Exhibit 111, p. 28; Exhibit 142; Exhibit 149; Exhibit 150, pp. 37-38 and 56).

NOTE: Because neither (b) (6) nor (b) (6) actually knew that (b) (6) draft book contained classified information at the time they reviewed it, the findings on Issues 11b-11d will focus primarily on (b) (6) and (b) (6) “concerns” regarding the manuscript.

ISSUE 11B: WHEN DID THE REVIEWERS AND/OR APPROVER BECOME AWARE OF SUCH FACT?

FINDING 11B: As noted in response to Issue 11A, above, neither (b) (6) nor (b) (6) actually knew that (b) (6) draft book contained classified information at the time they reviewed it; however, they were both concerned that the draft book might contain classified information.

(b) (6) became aware of the possibility that (b) (6) draft book might contain classified information between the date (b) (6) received the manuscript in the late summer or early fall of 2009 and 26 December 2009, which is the day (b) (6) signed (b) (6) legal review of the manuscript. (b) (6) became aware of the possibility that (b) (6) draft book might contain classified information between the date he received the manuscript in late November 2009 and 4 January 2010, which is the date he signed his memorandum for record (MFR) regarding the book.

(b) (6) became aware of the fact that (b) (6) book actually contained classified information between 6 and 8 August 2010, when (b) (6) received a copy of a memorandum from the Director of the DIA, LTG Burgess, to the Army’s Deputy Chief of Staff for Intelligence, LTG Zahner. (b) (6) became aware of the fact that (b) (6) book actually contained classified information 10 August 2010 when he received an e-mail from (b) (6) f that included a copy of LTG Burgess’ memorandum

(b) (6)



(Exhibit 86, p. 74). (b) (6) was likewise concerned about information that appeared suspicious, out of the ordinary, not appropriate, odd, out of place, or out of the norm (Exhibit 79, pp. 19, 44, 73-74, and 110-111; Exhibit 111, p. 28).

to LTG Zahner.

ANALYSIS 11B:

(b) (6) was the first 94th DIV official to receive and review (b) (6) completed manuscript.⁴ (b) (6) could not recall precisely when (b) (6) received a copy of the draft book, but (b) (6) thought it was probably in August or September of 2009, “plus or minus a couple of months” (Exhibit 86, p. 47).⁵

On 30 November 2009, (b) (6) sent (b) (6) an e-mail, in which (b) (6) stated:

...I was hoping you might be able to complete the classification review of my novel, the (b) (6) so that (b) (6) can sign off on it, as my supervisor per AR 530-1 OPSEC, prior to his departure, which we now anticipate to be 9 Jan 09.

Again – my ghost writer can provide the unclassified references she found to note the intelligence information and methods we discuss in the book (i.e., prove that the information was available from other sources) or other reference books of similar nature that contain the same type of information.

* * * * *

(Exhibit 141). (b) (6) responded the next day, noting that (b) (6) would “have a number of questions” when (b) (6) finished reading the book, and requesting (b) (6) to provide “supporting documents/cites” and meet with (b) (6) on 6 December 2009 “to discuss” the book⁶ (Exhibit 170).

By 19 December 2009, (b) (6) had read at least 299 pages of the draft book, and (b) (6) sent (b) (6) an e-mail asking him to: (1) confirm whether (b) (6) had obtained 33 pieces of information “through an open source,” and (2) provide (b) (6) “some assurance that the [33 pieces of information are] not classified” (Exhibit 142).

(b) (6) responded with the series of e-mails discussed in the response to Issue 11E, below, on 21 and 23 December 2009.⁷

⁴ (b) (6) also gave (b) (6) a copy of “Chapter One” of the manuscript to review; however, (b) (6) could not recall when this happened (Exhibit 119).

⁵ (b) (6) initially testified that (b) (6) received the manuscript in August or September 2009; however, (b) (6) later indicated that (b) (6) recalled having the book for approximately two months before (b) (6) reviewed it in December of 2009 (Exhibit 86, pp. 47-48). Therefore, (b) (6) may have received the manuscript as late as October 2009.

⁶ (b) (6) responded by saying that (b) (6) would not be at battle assembly that weekend (Exhibit 170).

⁷ (b) (6)

On 6 August 2010, LTG Burgess sent LTG Zahner a memorandum, in which he stated that:

DIA's preliminary classification review of (b) (6) manuscript has identified significant classified information, the release of which I have determined could reasonably be expected to cause serious damage to national security. I have also been informed that United States Special Operations Command (USSOCOM), the Central Intelligence Agency (CIA) and the National Security Agency (NSA) have determined that the manuscript contains classified information concerning their activities. In the case of NSA, this includes information classified at the TOP SECRET level.

(Exhibit 159). (b) (6) became aware of LTG Burgess' memorandum sometime between the date of the memorandum (*i.e.*, 6 August 2010) and the date BG LeDoux gave (b) (6) that discussed the memorandum (*i.e.*, 8 August 2010) (Exhibits 150, pp. 61-62; 159; 241). Therefore, (b) (6) became aware of the fact that (b) (6) book actually contained classified information between 6 and 8 August 2010.

(b) (6) received a copy of (b) (6) manuscript by e-mail in the "late November—window of '09" (Exhibit 79, p. 71). (b) (6) then printed out a hard copy of the manuscript and placed it in a binder, which he eventually gave to (b) (6) (Exhibit 79, p. 72).

On 27 December 2009, (b) (6) e-mailed (b) (6) legal review, as well as (b) (6) previous e-mail correspondence with (b) (6), to (b) (6) (Exhibits 146, 147, 148, and 149). (b) (6) then requested (b) (6) "concurrence and approval for my publishing the book, (b) (6)" (Exhibit 146). In addition, (b) (6) stated:

I and my ghostwriter (who performed a great deal of the independent research to show that there is no classified information within the pages of

(b) (6)

⁸ (b) (6)

the book in that there are original sources of information in existing unclassified sources) provided (b) (6) the full background...

Per AR 530-1 OPSEC, and the requirement that my supervisor approve the overall OPSEC/Security review, request your concurrence and approval of the overall manuscript based both on (b) (6) review and the full sourcing background provide (within the separate messages you will receive tonight).

(Exhibit 146). In response, (b) (6) indicated that he was only about half way through the manuscript, and he still had a couple of questions "that were not answered and one was on something possible (sic) being classified and[,] if not[,] maybe FOUO"⁹ (Exhibit 149). (b) (6) (Exhibit 149).

On 10 August 2010, (b) (6) sent (b) (6) a copy of the counseling statement that BG LeDoux gave (b) (6) on 8 August 2010, along with a copy of LTG Burgess' memorandum (Exhibit 247). Therefore, 10 August 2010 was the date that (b) (6) became aware of the fact that (b) (6) book actually contained classified information.

ISSUE 11C: HOW DID SUCH REVIEWERS AND/OR APPROVER BECOME AWARE OF SUCH FACT?

FINDING 11C: As noted in response to Issue 11A, above, neither (b) (6) nor (b) (6) actually knew that (b) (6) draft book contained classified information at the time they reviewed it; however, they were both concerned that the draft book might contain classified information based upon their review of the manuscript.

ANALYSIS 11C: Both (b) (6) and (b) (6) acknowledged that they read (b) (6) draft book and identified several "concerns," which are discussed more fully in the analysis of Issues 11D and 11E, below.

ISSUE 11D: WHAT ACTIONS DID SUCH REVIEWERS AND/OR APPROVER TAKE UPON BECOMING AWARE OF SUCH FACT?

FINDING 11D: Both (b) (6) and (b) (6) brought their concerns regarding the manuscript to (b) (6) attention, and (b) (6) assured them both that the manuscript contained only unclassified information from "open sources." (b) (6) who were qualified to determine whether the

⁹ (b) (6) annotated his concerns in his copy of the manuscript, which he subsequently gave to (b) (6). Therefore, there is no independent record of what those concerns may have been (Exhibit 79, pp. 72 and 88).

manuscript actually contained classified information, even though DoDD 5230.09, *Clearance of DoD Information for Public Release*, clearly required that (b) (6) manuscript be reviewed for clearance in accordance with DoDI 5230.29, *Security and Policy Review of DoD Information for Public Release*, prior to publication.¹⁰

ANALYSIS 11D:

(b) (6) On 19 December 2009, (b) (6) sent (b) (6) an e-mail asking him to: (b) (6)
(b) (6) (Exhibit 142). (b) (6) then discussed (b) (6) concerns with (b) (6) and conducted a cursory review of the e-mails (b) (6) sent (b) (6) on (b) (6)

¹⁰ See Issue 8 for a complete discussion of the requirements of DoDD 5230.09 and DoDI 5230.29.

¹¹ The 33 concerns that (b) (6) raised were:

(b) (5)



(Exhibit 142).

21 and 23 December 2009¹² (Exhibit 86, pp. 54, 59-60, 113-114, 124-125; Exhibit 150, pp. 38, 56). Finally, (b) (6) discussed (b) (6) concerns with (b) (6) (Exhibit 86, pp. 59-60, 62-64, 67-68, 129-130; Exhibits 150, pp. 38). (b) (6)

[REDACTED]

(b) (6) On 28 December 2009, (b) (6) sent (b) (6) an e-mail, in which he indicated that he was only about half way through the manuscript, and he still had a couple of questions "that were not answered and one was on something possible (sic) being classified and[,] if not[,] maybe FOUO"¹⁵ (Exhibit 149). (b) (6) later discussed his concerns, as well as (b) (6) concerns, with (b) (6) (Exhibit 79, pp. 17-19, 42-43, 52, 72, 79, 91-92, and 102); (b) (6)

[REDACTED]

(b) (6)

[REDACTED]

ISSUE 11E: HOW AND WHEN DID ANY OFFICIALS OF THE 94TH DIV LEARN THAT CLASSIFIED INFORMATION WAS CONTAINED IN (b) (6) BOOK?

FINDING 11E: Officials of the 94th DIV, to include BG LeDoux, (b) (6) and (b) (6), learned that (b) (6) book actually contained classified information between 6 and 8 August 2010 when they received a copy of a memorandum from the Director of the DIA, LTG Burgess, to the Army's Deputy Chief of Staff for Intelligence, LTG Zahner.

ANALYSIS 11E: On 6 August 2010, LTG Burgess sent LTG Zahner a memorandum, in which he stated that:

DIA's preliminary classification review of (b) (6) manuscript has identified significant classified information, the release of which I have determined could reasonably be expected to cause serious damage to national security. I have also been informed that United States Special Operations Command (USSOCOM), the Central Intelligence Agency (CIA) and the National Security Agency (NSA) have determined that the manuscript contains classified information concerning their activities. In the case of NSA, this includes information classified at the TOP SECRET level.

(Exhibit 159).

Officials of the 94th DIV, to include BG LeDoux, (b) (6) and (b) (6) became aware of LTG Burgess' memorandum sometime between the date of the memorandum (*i.e.*, 6 August 2010) and the date BG LeDoux gave (b) (6) a counseling statement that discussed the memorandum (*i.e.*, 8 August 2010) (Exhibits 150, pp. 61-62; 159; 241).

(b) (6)

ISSUE 11F: WHAT REPRESENTATIONS DID (b) (6) MAKE TO OFFICIALS IN THE 94TH DIV REGARDING THE PRESENCE OF CLASSIFIED INFORMATION IN (b) (6) BOOK? WHEN DID (b) (6) MAKE SUCH REPRESENTATIONS?

FINDING 11F: (b) (6) made the representations to officials in the 94th DIV set forth in the following analysis regarding the presence of classified information in (b) (6) book. In each case, (b) (6) claimed that the information in (b) (6) book was unclassified; however, many of the reasons (b) (6) provided to justify (b) (6) claim that the information in (b) (6) book was unclassified are false, incorrect, or misleading.

ANALYSIS 11F:

(b) (6) Representations.

On 17 March 2009, (b) (6) sent BG (then COL) Corson, (b) (6), and (b) (6) an e-mail regarding (b) (6) book,¹⁹ which stated, in part:

This is to notify you...of my acceptance of a contract to produce a trade book based (b) (6)

* * * * *

The focus will be on my duties while serving as (sic) on the (b) (6) from summer to winter of 2003....

(b) (6) the events and accomplishments described in the narrative will be the focus of the book...and since the narrative is unclassified, we plan to stick to information that is in the narrative and/or already in the media and other unclassified sources.

I will reveal no actual operational locations or sensitive tools, techniques or procedures.

* * * * *

(Exhibit 121).

¹⁹ BG Corson was the Commander of the 94th DIV at that time, and (b) (6) was the Secretary of the General Staff. (b) (6), (b) (6), and (b) (6) were "courtesy copied" on the e-mail, which was addressed to BG (then COL) Corson (Exhibit 121).

On 15 November 2009, (b) (6) sent (b) (6) an e-mail regarding feedback (b) (6) had received from (b) (6) publisher. This e-mail stated, in part:

* * * * *

There are no material changes to the book – just several editorial changes – and a collapsing of the (b) (6) – it will be greatly reduced and merged into chapter 13 – and toned down . . . I know this may not be a legal issue – but it is the largest material change to the content (i.e. no new details of technology, methods or individuals – the base line is the same).

* * * * *

(Exhibit 169).

On 30 November 2009, (b) (6) sent (b) (6) an e-mail, in which (b) (6) stated: “Again – my ghost writer can provide the unclassified references she found to note the intelligence information and methods we discuss in the book (i.e., to prove that the information was available from other sources) or other reference books of similar nature that contain the same type of information” (Exhibit 141).

On 19 December 2009, (b) (6) sent (b) (6) an e-mail, asking (b) (6) to confirm whether (b) (6) had obtained 33 pieces of information “(b) (6)”, and to provide (b) (6) “some assurance that the [33 pieces of information are] not classified” (Exhibit 142). In response, (b) (6) sent (b) (6) an e-mail on 21 December 2009,²⁰ in which (b) (6) stated:

Some of what you asked about (such as the interrogation) we have already ‘scrubbed’ it – i.e. the specific names have been changed and the time period of keeping things classified (five years) has long passed...so most of what we are talking about here was either 1) sources from an existing reference or 2) specific operational details changed so that it does not reveal true focus or target or 3) the information is past the five year protection date.

(Exhibit 144). (b) (6) then went on to explain why the first 13 of the pieces of information that (b) (6) identified were not classified by saying, *inter alia*, that the information was: (1) “common knowledge” or a “common term” (Issues 1 and 2); (2) mentioned in other sources, such as books and newspaper articles (Issues 3, 4 and 11); (3) mentioned in (b) (6) unclassified personnel records (Issues 5,²¹ 6, 7, 9, and

²⁰ (b) (6) provided this e-mail to (b) (6) on 27 December 2009 (Exhibit 147).

²¹ (b) (6) admitted that (b) (5)

10); (4) disclosed during (b) (6) Congressional testimony (Issue 8); or (5) confirmed by other sources, such as (b) (6) and (b) (6) (Issue 12) (Exhibit 144).

On 23 December 2009, (b) (6) sent (b) (6) an e-mail to explain why the remaining 20 pieces of information that (b) (6) had identified in (b) (6) 19 December 2009 e-mail were not classified (Exhibit 145). Again, (b) (6) justified (b) (6) "belief"²³ that the information was not classified by saying, *inter alia*, that: (1) the information concerned locations that were no longer used (Issues 14, 19, and 29); (2) names that had been changed (Issues 19 and 20); (3) events that were "normal" (Issue 18);²⁴ (4) information mentioned in other sources (Issues 15, 17, 21,²⁵ 22, 26, 27, 28, 32 and 33); (5) "an already acknowledged problem" (Issue 16);²⁶ (6) information that was over five years old (Issues 19 and 22); (7) information confirmed by other sources (Issue 23);²⁷ (8) information mentioned in Congressional testimony (Issues 24 and 31); or (9) "a common term" (Issue 26) (Exhibit 145).

On 27 December 2009, (b) (6) sent (b) (6) an e-mail, in which (b) (6) stated:

I and my ghostwriter (who performed a great deal of the independent research to show that there is no classified information within the pages of the book in that there are original sources of the information in existing unclassified sources) provided (b) (6) the full background...I will forward those e-mail to you tonight so you have those as reference (sic).

²² (b) (6) provided this e-mail to (b) (6) on 27 December 2009 (Exhibit 148).

²³ (b) (6) frequently qualified (b) (6) explanations by saying (b) (6) did not "believe" or "feel" that the information being questioned was classified (Exhibit 145). For example, when addressing the (b) (6) matter, (b) (6) stated: "I do not believe this is 'classified' information – especially (b) (6) light of the heavy editing of specific facts, and changing of names and specific locations." Similarly, when addressing the issue regarding (b) (6) (b) (6) stated: "[F]rankly, again, I do not feel this is classified..." (Exhibit 145).

²⁴ (b) (6) "believed" that the (b) (5) was not classified because it was a (b) (5) and was listed on the (b) (5) (Exhibit 145). However, the fact that this was a (b) (5) is not dispositive—particularly since this appears to have been an operational mission that was, very likely, classified.

²⁵ (b) (6) conceded that the "take" from the raid might be classified and offered to "dial back" the details (Exhibit 145).

²⁶ (b) (6) conceded that the "disposition" of the (b) (6), (b) (5) "may be classified" (Exhibit 145).

²⁷ (b) (6) noted that the (b) (6), (b) (6) was "public information," but then went on to admit that (b) (6) provided "the rest of the story" (i.e., the fact that there was a plan for the coup) (Exhibit 145).

Per AR 530-1 OPSEC, and the requirement that my supervisor approve the overall OPSEC/Security review, request your concurrence and approval of the overall manuscript based both on (b) (6) review and the full sourcing background provided (within the separate messages you will receive tonight).

I will be available this coming week to chat, face to face, to provide you any additional background - or (b) (6) my ghostwriter would also be able to provide you first hand information regarding her sourcing.

(Exhibit 146). The same day, (b) (6) sent (b) (6) the same e-mails (b) (6) had previously sent to (b) (6) on 21 and 23 December 2009 (Exhibits 147-149).

On 29 December 2009, (b) (6) forwarded an e-mail to (b) (6) from (b) (6) that discussed (b) (6) stating: "FYI – for the (b) (6) review...you probably already had the sense this battle was well documented...." (Exhibit 173).

On 17 June 2010, (b) (6) sent BG LeDoux an e-mail, in which (b) (6) stated:

Pls see below – my former boss, and Director of DIA, LTG Pat Hughes read the book and even provided an endorsement/blurb for the book...I strongly suspect that he would not have been shy in telling me if he saw anything that could damage national Defense (sic)...I am sure he'd be willing to discuss his view of the book with you should you be interested.

(Exhibit 178).

On 19 June 2010, (b) (6) sent BG LeDoux an e-mail, in which (b) (6) stated:

(b) (6)

(Exhibits 88 and 89).

On 19 June 2010, (b) (6) also sent (b) (6) an e-mail, in which (b) (6) stated: "There is little info on DIA – other than me being sent by their mechanisms to (b) (6) – and none that is (b) (6) – and (b) (6) and I'm sure he'd have recognized it if it was there...there is none" (Exhibit 88).

On 27 July 2010, (b) (6) sent an e-mail to (b) (6) attorney, (b) (6), in which (b) (6) stated:

(b) (6), (b) (5)




(b) (6)



³¹ See FN 29, above.

(b) (6), (b) (5)



m
e.³²

(Exhibit 183). Minutes later, (b) (6) forwarded the same e-mail to (b) (6) with the following additional comments:

(b) (6), (b) (5)



(Exhibit 184).

(b) (6)



On 8 August 2010, (b) (6) stated "I know there is nothing classified in my book" (b) (6) received from BG LeDoux, (b) (6) (Exhibit 241). (b) (6)

On 18 August 2010, (b) (6) sent BG LeDoux, (b) (6) and (b) (6) an e-mail, in which (b) (6) stated, in part:

* * * * *

I did inform them of the fact that the book, in its current form, was actually written by a ghost writer – this fact apparently caught them off guard. I explained that I had given (b) (6) (who was, at the time of writing the book, a (b) (6) – this was the reason she could not be the public "co-author" of the book) the unclassified information in (b) (6) nomination, combined with my personal log/dispatches I sent from (b) (6) during my deployment and identified to her individuals who were both characters in the book and sources for the book – which were (b) (6)

* * * * *

I explained further that had they contacted the Army Reserve on a timely basis they would have learned about the process we (the team of (b) (6) and I) had used to write the book – and how Army Reserve had outlined and supervised the review process as stipulated in Army regulations. I explained that (b) (6) was the primary writer – that she would prepare chapters, based on the agreed upon storyline/framework approved by the publisher when they (the publisher purchased to book in Feb 2009). (b) (6) would research, interview and write – then I'd edit the chapters. I explained that our methodology was recommended by (b) (6) and used to maximise (sic) her talents as a researcher/writer and rely on information from public sources (i.e. sources of info from other publications or web sites) as well as detailed interviews of individuals other than me to fill in details of the story that I did not have or did not review.

* * * * *

Concerns:

1) Name Issue...I figured that (b) (6) was shooting from the hip when he said there were (b) (6) "on the list and that appears to be the case – I continue to content (sic) there are none in the book – and any name that (b) (6) obtained from other interviews with the other officers (b) (6) are valid to

be listed and were not undercover at the time of the events that are captured in the book – however, I do not wish to place anyone in harms way...I will be prepared to come up with “fictional names” to replace the names they identify to me that they wish to be replaced....

* * * * *

2) Content Issue. Part of the clearance process agreed upon with the Army Reserve was to allow for (b) (6) to disclose her sourcing – and if that sourcing was not me, it was as far as I can tell, permissible to be in the book since it was not from me or an official government source....

* * * * *

Conclusion – I am disappointed, but not shocked, that DIA/DoD did NOT know that the source material for much of the book had come through and by a ghost writer – I strongly believe the information they now feel may be “classified” is not by the fact that (b) (6) was able to obtain the information from open sources....

(Exhibit 249).

On 24 August 2010, (b) (6) sent BG LeDoux, (b) (6) and (b) (6) an e-mail, in which (b) (6) stated, in part:

* * * * *

1) They have yet to ask for or look at the process we used in the USAR clearance – nor have they asked for reference material...they are not trying (sic) to turn basic things that are unclassified, like being based out of (b) (6) (my unclassified orders specified (b) (6) as classified information – and further, they are trying to change material issues that are unclassified (for example, (b) (6) – they have now insisted these be removed....

* * * * *

3) There are major material changes that I cannot get into here that despite being in the public domain are now “classified”....

* * * * *

In light of their changes, I still believe that the overall Army Reserve review was sufficient...I do not feel there would have been any damage done to national security – there is nothing in the book that is not already out in some instance somewhere else...

(Exhibit 93).

On 2 September 2010, (b) (6) sent BG LeDoux, (b) (6) and several other members of the 94th DIV staff an e-mail, in which (b) (6) stated:

While I did not agree on the DoD redactions that were finalised (sic) last Friday, since I was able to produce unclassified source documents that the DoD folks ignored, I notified the publisher that I would accept the DoD edits/redactions – and worked with them on the same the last two days in (b) (6) – therefore the publisher notified DoD yesterday that they had accepted the redactions and the publisher, based on their contact with DoD moving forward with printing the second addition (sic).

(Exhibit 126).

(b) (6)



³⁴ In accordance with AR 380-5, paragraph 1-9, (b) (6) had an obligation to safeguard information, related to national security, to which (b) (6) had access.

(b) (6)



(b) (6) Army Regulation 380-5, paragraph 2-11, which implements EO 12598, Section 1.6, states, in part, that:

(b) (6)



³⁶ In an e-mail, dated 13 May 2009, regarding the capture of a (b) (6) (b) (6) advised (b) (6) ghostwriter that "(b) (6) had a big role, and he promised to 'huddle with (b) (6) to try to remember how it went down...' (Exhibit 194). Then, in an e-mail, dated 26 May 2009, (b) (6) asked (b) (6) for 'a timeline we could look at to plug events into based on your recollection' (Exhibit 211). (b) (6) also noted that '(b) (6) was here last week – we had an excellent session with him' (Exhibit 211). Finally, in an e-mail, dated 20 September 2009, (b) (6) provided several people with 'part 2 of (b) (6) draft epilogue' and solicited their input (Exhibit 168).

³⁷ In (b) (6) 22 December 2010 interview, (b) (6) stated:

There were three collaborators, and I'll use their true names since you've already brought up (b) (6). And those are the three folks who (b) (6) interviewed separately from me, completely separately from me, to talk about details that either I didn't have or that she felt she needed to have to kind of fill in the atmospherics of those things. And so it was within that context that my assumption was that they would give her only unclassified information based on their security agreement. So if it came from them within those discussions, my belief was, based on them signing their own agreements, they had followed their agreement and they'd given it to (b) (6) of their own free will, who then incorporated it into my book.

(Exhibit 71, p. 126).

Information will be declassified as soon as it no longer meets the standards for classification. **Information will remain classified as long as it is in the interest of national security and meets the criteria stated in this regulation.** At the time an item of information is originally classified, the original classifier must decide the length of time the information will require classification and select an appropriate declassification date or event. The term “time or event phased declassification date,” used for acquisition programs, is also synonymous with the term “decryption date” as used in this regulation. The decryption date indicates when the information no longer requires protection in the interests of national security. When deciding on the decryption date or event, the following options are the only ones available to the OCA:

a. At the time of original classification, the original classification authority will attempt to establish a specific date or event for decryption based upon the duration of the national security sensitivity of the information. **The OCA will attempt to determine a date, within ten years from the date of classification, upon which the information can be automatically decrypted.** If that is not possible, they will attempt to determine a specific event, reasonably expected to occur within 10 years, that can be set as the signal for automatic decryption of the information. This is referred to as the “ten-year rule.” The date or event will not exceed the time frame in subparagraph c, below.

b. If information has originally been assigned a date or event for decryption of ten years or less, in accordance with subparagraph a above, and the OCA later has reason to believe longer protection is required, **the classification can be extended for successive periods of up to ten years at a time**, not to exceed the time period in subparagraph e, below, where applicable.

c. **If unable to determine a date or event that is ten years or less, the OCA will assign an exemption designation to the information, if the information qualifies for exemption from automatic decryption in ten years.** This could be done if the unauthorized disclosure of the information could reasonably be expected to cause damage to the national security, if specific information requires a period beyond 10 years from the date of original classification, and the release of the information could reasonably be expected to result in one or more of the following:

(1) Reveal an intelligence source, method, or activity, or a cryptologic system or activity.

* * * * *

(5) Reveal foreign government information.

(6) Damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than ten years.

* * * * *

d. Information marked for an indefinite duration of classification under prior orders...or information classified under prior orders that contain no declassification instructions, will be declassified in accordance with chapter 3 of this regulation...³⁸ When an exemption category is selected, there is no requirement to select a specific date or event for declassification at the time of original classification. In those cases in which the original classifier does not select a declassification date, the following will apply:

(1) The information, if placed in records that have been determined to have permanent historical value under Title 44, USC (see “permanent” files under AR 25-400-2), will be automatically declassified in 25 years from the date of original classification, unless specifically exempted or unless this policy is changed before that time.

(2) The information, if not placed in such records (mentioned in subparagraph (1) above), will remain classified until destroyed, or until the OCA determines a change in classification.

e. For information in records determined to have permanent historical value, successive extensions may not exceed a total of 25 years from the date of the information’s origin. Continued classification of this information is governed by the automatic declassification provisions of this regulation contained in chapter 3.

³⁸ AR 380-5, Chapter 3, implements the automatic declassification requirements of EO 12958, as amended by EO 13142, which generally states that classified information must be declassified after 25 years unless the agency head exempts the information from automatic declassification because its release would, *inter alia*: (1) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States; or (2) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States.

* * * * *

(emphasis added). Based on the above criteria it is clear that there is no automatic declassification of classified information after 5 years.

This is to notify you...of my acceptance of a contract to produce a trade book based on my experience as an (b) (6)

* * * * *

The focus will be on my duties while serving as (sic) on the (b) (6) from summer to winter of 2003....

I have attached a copy of (b) (6) – the events and accomplishments described in the narrative will be the focus of the book...and since the narrative is unclassified, we plan to stick to information that is in the narrative and/or already in the media and other unclassified sources.

I will reveal no actual operational locations or sensitive tools, techniques or procedures.

* * * * *

(Exhibit 121).

On 20 September 2009, (b) (6) sent an e-mail to several individuals (b) (6) served with in (b) (6),³ requesting their input on the draft epilogue for (b) (6) book (Exhibits 168 and 198). In that email, (b) (6) stated that the epilogue was (b) (6) (Exhibits 168 and 198).

On 15 November 2009, (b) (6) sent (b) (6) an e-mail regarding feedback (b) (6) had received from (b) (6) publisher. This e-mail stated, in part:

* * * * *

There are no material changes to the book – just several editorial changes – and a collapsing of the (b) (6) – it will be greatly reduced and merged into chapter 13 – and toned down . . . I know this may not be a legal issue – but it is the largest material change to the content (i.e. no new details of technology, methods or individuals – the base line is the same).

* * * * *

(Exhibit 169).

³ The individual to whom (b) (6) sent the e-mail include (b) (6)

On 30 November 2009, (b) (6) sent (b) (6) an e-mail, in which he stated: “Again – my ghost writer can provide the unclassified references she found to note the intelligence information and methods we discuss in the book (*i.e.*, to prove that the information was available from other sources) or other reference books of similar nature that contain the same type of information” (Exhibit 141).

On 19 December 2009, (b) (6) sent (b) (6) an e-mail, asking (b) (6) to confirm whether (b) (6) had obtained 33 pieces of information “through an open source,” and to provide (b) (6) “some assurance that the [33 pieces of information are] not classified” (Exhibit 142). In response, (b) (6) sent (b) (6) an e-mail on 21 December 2009,⁵ in which (b) (6) stated:

⁴ The 33 concerns that (b) (6) raised were:

(b) (6), (b) (5)



(Exhibit 142).

⁵ (b) (6) provided this e-mail to (b) (6) on 27 December 2009 (Exhibit 147).

Some of what you asked about (such as the interrogation) we have already 'scrubbed' it – i.e. the specific names have been changed and the time period of keeping things classified (five years) has long passed...so most of what we are talking about here was either 1) sources from an existing reference or 2) specific operational details changed so that it does not reveal true focus or target or 3) the information is past the five year protection date.

(Exhibit 144). (b) (6) then went on to explain why the first 13 of the pieces of information that (b) (6) identified were not classified by saying, *inter alia*, that the information was: (1) "common knowledge" or a "common term" (Issues 1 and 2); (2) mentioned in other sources, such as books and newspaper articles (Issues 3, 4 and 11); (3) mentioned in (b) (6) unclassified personnel records (Issues 5,⁶ 6, 7, 9, and 10); (4) disclosed during (b) (6) Congressional testimony (Issue 8); or (5) confirmed by other sources, such as (b) (6) (Issue 12) (Exhibit 144).

On 23 December 2009, (b) (6) sent (b) (6) an e-mail to explain why the remaining 20 pieces of information that (b) (6) had identified in (b) (6) 19 December 2009 e-mail were not classified (Exhibit 145). Again, (b) (6) justified (b) (6) "belief"⁸ that the information was not classified by saying, *inter alia*, that: (1) the information concerned locations that were no longer used (Issues 14, 19, and 29); (2) names that had been changed (Issues 19 and 20); (3) events that were "normal" (Issue 18);⁹ (4) information mentioned in other sources (Issues 15, 17, 21,¹⁰ 22, 26, 27, 28, 32 and 33); (5) "an already acknowledged problem" (Issue 16);¹¹ (6) information that was over five

⁶ (b) (6) admitted that (b) (5), (b) (6), "and that information regarding the program was "not in the public domain" (Exhibit 144).

⁷ (b) (6) provided this e-mail to (b) (6) on 27 December 2009 (Exhibit 148).

⁸ (b) (6) frequently qualified (b) (6) explanations by saying (b) (6) did not "believe" or "feel" that the information being questioned was classified (Exhibit 145). For example, when addressing the (b) (6) matter, (b) (6) stated: "I do not believe this is 'classified' information – especially (b) (6) light of the heavy editing of specific facts, and changing of names and specific locations." Similarly, when addressing the issue regarding (b) (6), (b) (6) stated: "[F]rankly, again, I do not feel this is classified..." (Exhibit 145).

⁹ (b) (6) "believed" that the (b) (6), (b) (5) "was not classified because it was a (b) (5) and was listed on the flight manifests for that day (Exhibit 145). However, the fact that this was a (b) (5) is not dispositive—particularly since this appears to have been an operational mission that was, very likely, classified.

¹⁰ (b) (6) conceded that the "take" from the raid might be classified and offered to "dial back" the details (Exhibit 145).

¹¹ (b) (6) conceded that the "disposition" of the (b) (6), (b) (5) "may be classified" (Exhibit 145).

years old (Issues 19 and 22); (7) information confirmed by other sources (Issue 23);¹² (8) information mentioned in Congressional testimony (Issues 24 and 31); or (9) “a common term” (Issue 26) (Exhibit 145).

On 26 December 2009, (b) (6) completed (b) (6) legal review of (b) (6) manuscript (Exhibits 146 and 171). In so doing, (b) (6) specifically noted (b) (6) assurances that the manuscript contained no classified information, stating: (b) (5)

(Exhibit 146).

On 27 December 2009, (b) (6) sent (b) (6) an e-mail, in which (b) (6) stated:

I and my ghostwriter (who performed a great deal of the independent research to show that there is no classified information within the pages of the book in that there are original sources of the information in existing unclassified sources) provided (b) (6) the full background...I will forward those e-mail to you tonight so you have those as reference (sic).

¹² (b) (6) noted that the “(b) (6)” was “public information,” but then went on to admit that (b) (6) provided “the rest of the story” (i.e., the fact that there was a plan for (b) (6) (Exhibit 145).)

(b) (6)

(Exhibit 86, pp. 97-98).

Per AR 530-1 OPSEC, and the requirement that my supervisor approve the overall OPSEC/Security review, request your concurrence and approval of the overall manuscript based both on (b) (6) review and the full sourcing background provided (within the separate messages you will receive tonight).

I will be available this coming week to chat, face to face, to provide you any additional background - or (b) (6) my ghostwriter would also be able to provide you first hand information regarding her sourcing.¹⁴

(Exhibit 146). The same day, (b) (6) sent (b) (6) the same e-mails (b) (6) had previously sent to (b) (6) on 21 and 23 December 2009 (Exhibits 147-149).

On 29 December 2009, (b) (6) forwarded an e-mail to (b) (6) from (b) (6) that discussed "(b) (6)," stating: "FYI – for the (b) (6) review...you probably already had the sense this battle was well documented...." (Exhibit 173).

(b) (6)



(Exhibit 79, pp. 18-20).

In mid-May 2010, the new 80th TC PAO, (b) (6), became aware of 94th DIV's review of (b) (6) book and expressed concerns about it to 80th TC leadership (Exhibits 156, 175, 312, and 313). On 11 May 2010, (b) (6) sent an e-mail to BG LeDoux regarding those concerns (Exhibit 124). In the e-mail, (b) (6) made express references to (b) (6) representations that there was no classified or otherwise sensitive information in the book:

Upon completion of the initial DRAFT, (b) (6) provided a copy [of his book] to (b) (6), the 94th SJA for legal, ethical review. In addition, since (b) (6) in his (b) (6) works for (b) (6), he also conducted a security review at the same time. On occasions he noted several instance (sic) where he felt there may be a possible security issue and asked that (b) (6) clarify. On each and every occasion (b) (6) provide (sic) his source of information which was public (Open Source). I will assume that (b) (6) has retained all the correspondence between him and (b) (6) concerning any issues, questions and comments.

* * * * *

Based on my civilian position I have a working knowledge of info that may be considered classified or information that may not be releasable to the public. Upon reviewing the book I provided (b) (6) numerous comments on what I determined to be possible issues and maybe considered borderline OPSEC. (b) (6) addresses (sic) each and every question/issue presented and in most cases the information had already been published in an open source of some sort.

(Exhibit 124).

On 25 May 2010, (b) (6) sent (b) (6) an e-mail regarding the 94th DIV's security review of (b) (6) manuscript. (b) (6) obliquely acknowledged (b) (6) "open source" representations to (b) (6) and (b) (6) at one point, stating that "Army provided clearance for both legal and security... as long as an issue was in the open press, and was not considered new they permitted it" (Exhibit 175).

On 17 June 2010, (b) (6) sent BG LeDoux an e-mail, in which (b) (6) stated:

Pls see below – my former boss, and Director of DIA, LTG Pat Hughes read the book and even provided an endorsement/blurb for the book... I strongly suspect that he would not have been shy in telling me if he saw anything that could damage national Defense (sic)... I am sure he'd be willing to discuss his view of the book with you should you be interested.

(Exhibit 178).

On 19 June 2010, (b) (6) sent BG LeDoux an e-mail, in which (b) (6) stated:

(b) (6)

(Exhibits 88 and 89).

On 19 June 2010, (b) (6) also sent (b) (6) an e-mail, in which (b) (6) stated: "There is little info on DIA – other than me being sent by their mechanisms to (b) (6) – and none that is (b) (6) – and (b) (6) has a (b) (6) and I'm sure he'd have recognized it if it was there...there is none" (Exhibit 88).

On 27 July 2010, (b) (6) sent an e-mail to (b) (6) attorney, (b) (6), in which (b) (6) stated:

(b) (6), (b) (5)

¹⁵ Neither (b) (6) nor (b) (6) memorandum stated that they were satisfied that (b) (6) manuscript contained no classified information. (b) (6) memorandum indicated that (b) (6) (Exhibit 171). Similarly, although (b) (6) found the manuscript "sufficient for publication," he merely stated that he found "no obvious security or legal issues in the DRAFT manuscript," and referred (b) (6) back to (b) (6) memorandum for additional guidance (Exhibit 151).

(b) (6)

(b) (6), (b) (5)



(Exhibit 183). Minutes later, (b) (6) forwarded the same e-mail to (b) (6) with the following additional thoughts:

(b) (6), (b) (5)



(b) (6)



¹⁸ See FN 16, above.

¹⁹ (b) (6)



(b) (6), (b) (5)

(Exhibit 184).

On 8 August 2010, (b) (6) stated "I know there is nothing classified in my book" in response to a counseling statement (b) (6) received from BG LeDoux, advising (b) (6) that the 94th DIV was rescinding its previous clearance of (b) (6) book (Exhibit 241).

On 9 August 2010, (b) (6) sent LTG (Ret.) Patrick Hughes an e-mail, in which (b) (6) stated:

Let me reiterate – there is nothing in the book that is "classified" – I am NOT the of original information and I think DIA is failing to see that...there are tons of books already out that contain far more specific operation detail – we drew heavily from open source (other books), research and interviews by my research and my own unclassified documents....

(Exhibit 188).

On 11 August 2010, (b) (6) sent an e-mail to (b) (6), Office of the Chief of Public Affairs, in which (b) (6) stated:

I am a bit confused as to why we are using the DD 1910 since this book is not Defense Information and I am not a 'DoD Employee' this book is an original work created by my research assistant/writer (b) (6) and me – there were no other official DoD documents, other than the documents I've provided you or referenced and prepare (sic) the book's narrative. She interviewed several members of the (b) (6) which is one of the focus elements of the book – and it was information from those interviews that was largely used to fill in events that I did not have clear recollection of...she has retained records of these interviews and I give you my permission to contact and dialog with her directly. Plus – she used references provided to her by me and others that were unclassified to find open/unclassified sources for the material in the book.

²⁰ In the "note" (b) (6) sent (b) (6) attorney, (b) (6) continued to claim that, (b) (6), (b) (5) Therefore, there was (b) (6), (b) (5) (Exhibit 183). However, (b) (6) "note" is both (b) (6) since (b) (6) not only played a significant role in steering the review of (b) (6) manuscript, but also provided several specious reasons why the information in (b) (6) manuscript was not classified, which (b) (6) and (b) (6) blindly accepted.

There are several excellent references out there we used to clarify and ensure our information was accurate but not classified. (b) (6) retains the research, background and interview material – I do not retain any book materials other than those the Army Reserve and I corresponded about electronically.

* * * * *

JAWBREAKER (Gary Berntsen) and several others (The Mission, the Men and Me, by Peter Blaber and Kill Bin Laden, by Dalton Fury) were used as source material to make sure nothing that was said in my book was 'new or classified' – sense (sic) (b) (6) and (b) (6) had to rely entirely on UNCLASSIFIED SOURCES such as these to fill in specific technical details to help strengthen the narrative.

Therefore, while the book contains information that may be embarrassing, but is not remotely classified ... and some of the more sensitive points –

(b) (5)

(Exhibit 92).

On 18 August 2010, (b) (8) sent BG LeDoux, (b) (6) and (b) (6) an e-mail, in which (b) (6) stated, in part:

* * * * *

I did inform them of the fact that the book, in its current form, was actually written by a ghost writer – this fact apparently caught them off guard. I explained that I had given (b) (6) (who was, at the time of writing the book, a (b) (6) – this was the reason she could not be the public "co-author" of the book) the unclassified information in my (b) (6), combined with my personal log/dispatches I sent from (b) (6) during my deployment and identified to her individuals who were both characters in the book and sources for the book – which were (b) (6)

* * * * *

I explained further that had they contacted the Army Reserve on a timely basis they would have learned about the process we (the team of (b) (6) and I) had used to write the book – and how Army Reserve had outlined

and supervised the review process as stipulated in Army regulations. I explained that (b) (6) was the primary writer – that she would prepare chapters, based on the agreed upon storyline/framework approved by the publisher when they (the publisher purchased to book in Feb 2009). (b) (6) would research, interview and write – then I'd edit the chapters. I explained that our methodology was recommended by (b) (6) and used to maximise (sic) her talents as a researcher/writer and rely on information from public sources (i.e. sources of info from other publications or web sites) as well as detailed interviews of individuals other than me to fill in details of the story that I did not have or did not review.

* * * * *

Concerns:

1) Name Issue...I figured that (b) (6) was shooting from the hip when he said there were (b) (6) " on the list and that appears to be the case – I continue to content (sic) there are none in the book – and any name that (b) (6) obtained from other interviews with the other officers (b) (6) are valid to be listed and were not undercover at the time of the events that are captured in the book – however, I do not wish to place anyone in harms way...I will be prepared to come up with "fictional names" to replace the names they identify to me that they wish to be replaced....

* * * * *

2) Content Issue. Part of the clearance process agreed upon with the Army Reserve was to allow for (b) (6) to disclose her sourcing – and if that sourcing was not me, it was as far as I can tell, permissible to be in the book since it was not from me or an official government source....

* * * * *

Conclusion – I am disappointed, but not shocked, that DIA/DoD did NOT know that the source material for much of the book had come through and by a ghost writer – I strongly believe the information they now feel may be "classified" is not by the fact that (b) (6) was able to obtain the information from open sources....

(Exhibit 249).

On 24 August 2010, (b) (6) sent BG LeDoux, (b) (6) and (b) (6) an e-mail, in which (b) (6) stated, in part:

* * * * *

1) They have yet to ask for or look at the process we used in the USAR clearance – nor have they asked for reference material...they are not trying (sic) to turn basic things that are unclassified, like being based out of (b) (6) (my unclassified orders specified (b) (6) as classified information – and further, they are trying to change material issues that are unclassified (for example, (b) (6)) – you will see there is (sic) specific agencies and activities cited in my (b) (6) – they have now insisted these be removed....

* * * * *

3) There are major material changes that I cannot get into here that despite being in the public domain are now “classified”....

* * * * *

In light of their changes, I still believe that the overall Army Reserve review was sufficient...I do not feel there would have been any damage done to national security – there is nothing in the book that is not already out in some instance somewhere else...

(Exhibit 93).

On 2 September 2010, (b) (6) sent BG LeDoux, (b) (6) and several other members of the 94th DIV staff an e-mail, in which (b) (6) stated:

While I did not agree on the DoD redactions that were finalised (sic) last Friday, since I was able to produce unclassified source documents that the DoD folks ignored, I notified the publisher that I would accept the DoD edits/redactions – and worked with them on the same the last two days in (b) (6) – therefore the publisher notified DoD yesterday that they had accepted the redactions and the publisher, based on their contact with DoD moving forward with printing the second addition (sic).

(Exhibit 126).

On 22 December 2010, (b) (6) was interviewed pursuant to this investigation. During that interview, (b) (6) confirmed that (b) (6) told (b) (6), (b) (6) and other officials that there was no classified information in (b) (6) book, based on the familiar rationale that the information in question had previously appeared in open sources. (b) (6) also told the investigating officers that there was no classified information in the book, based on the same rationale. (b) (6)

(b) (6)

A large rectangular area at the top of the page is completely blacked out, indicating redacted content.

(b)

(b) (6)

A very large rectangular area covering the majority of the page is completely blacked out, indicating redacted content.

(b) (6)



* * * * *

(b) (6)



* * * * *

(b) (6)



* * * * *

(b) (6)



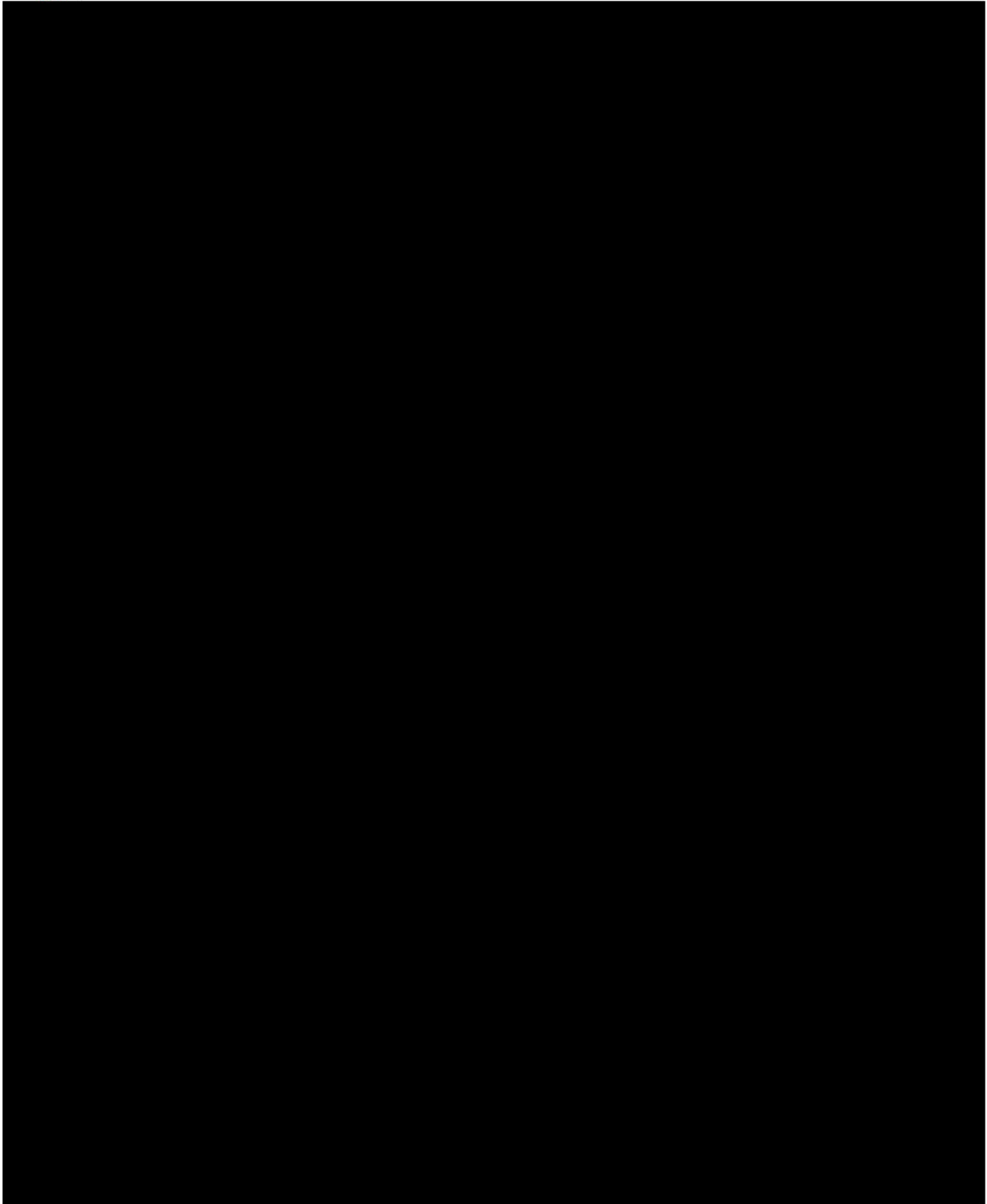
* * * * *

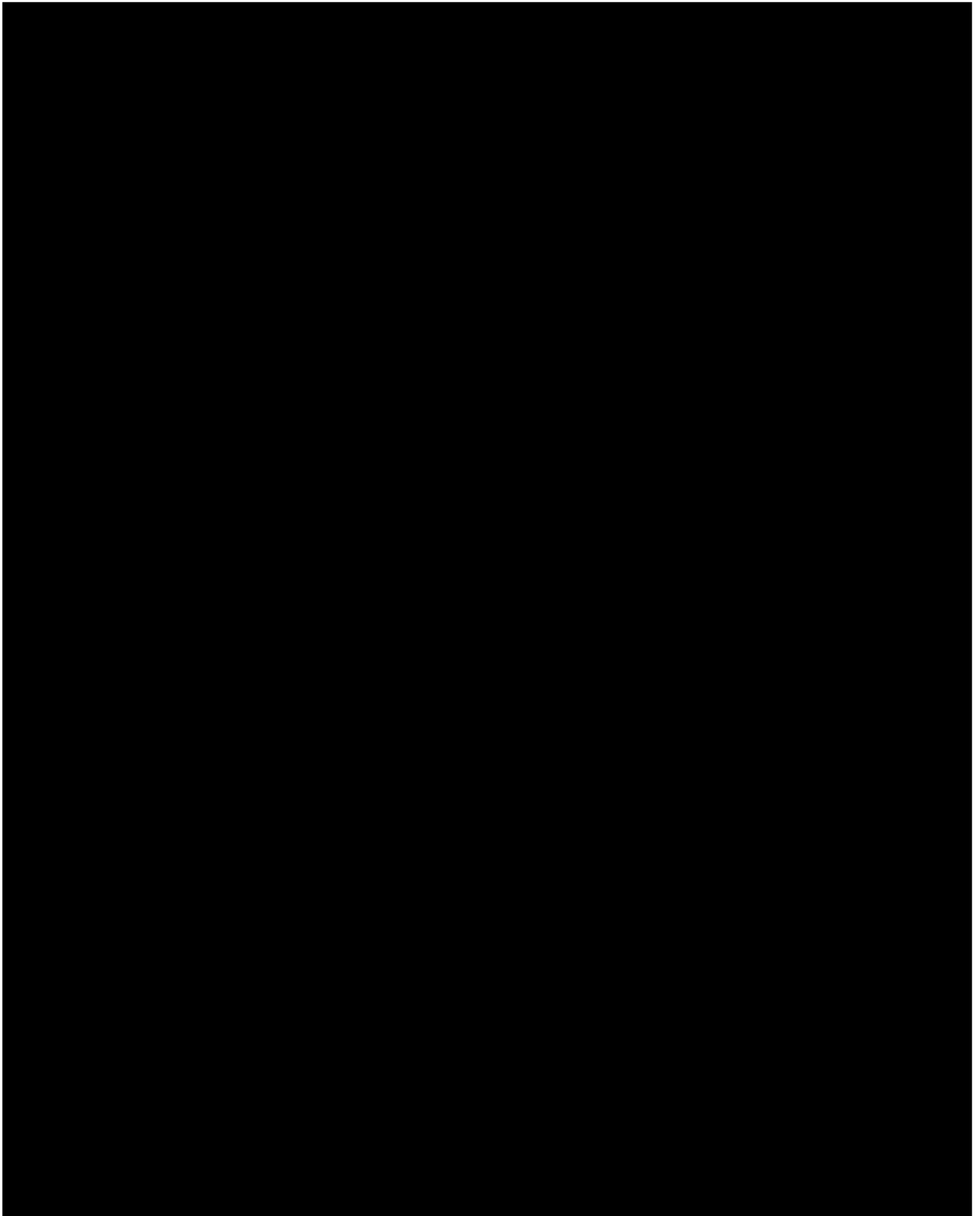
...I do feel – strongly believe that we can prove every – every one of those redactions is already in the public domain and de-classified....

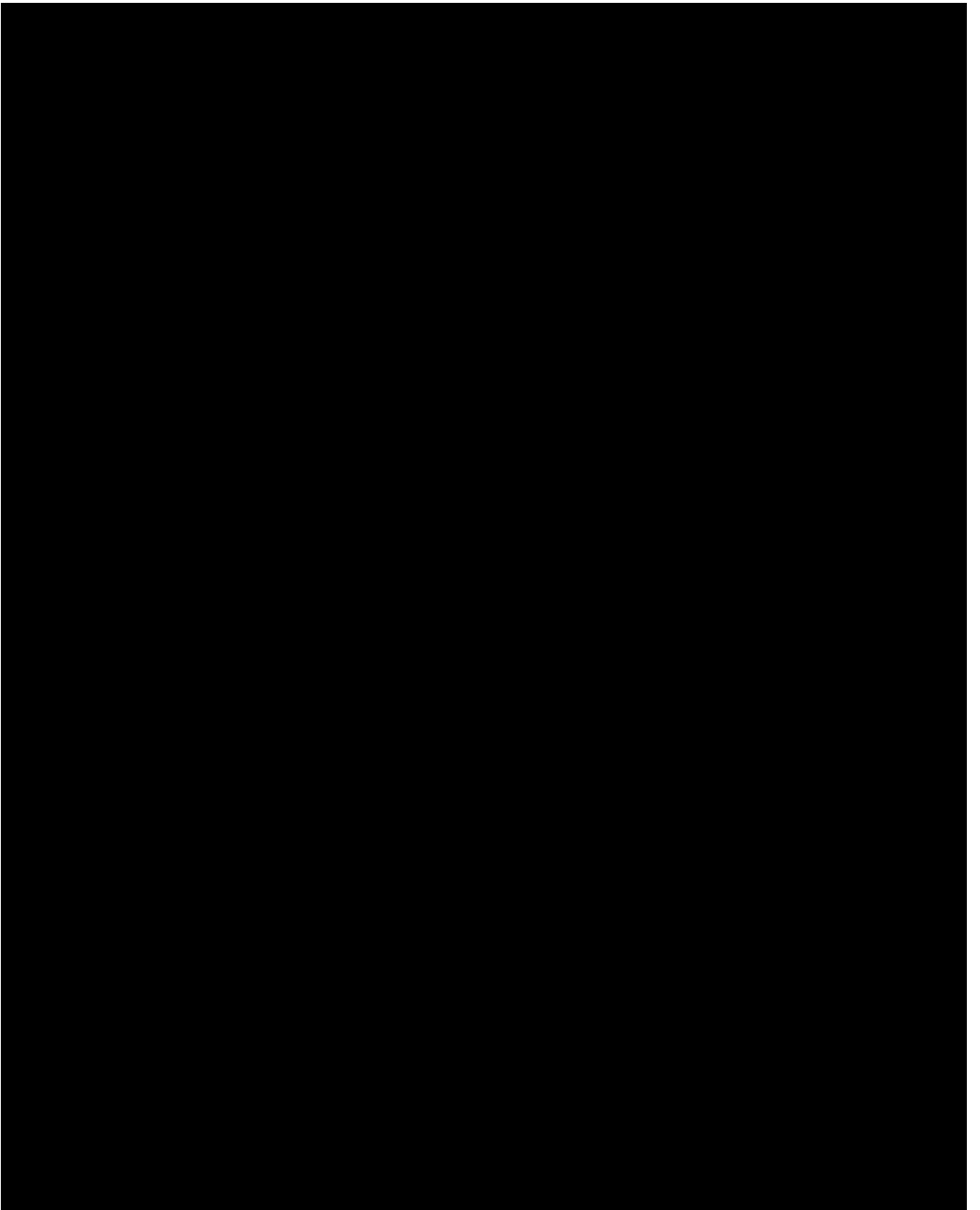
(Exhibit 71, 124-126, 132-134, 136, 138-140, 142-143, 223-226, 301, 316-317).

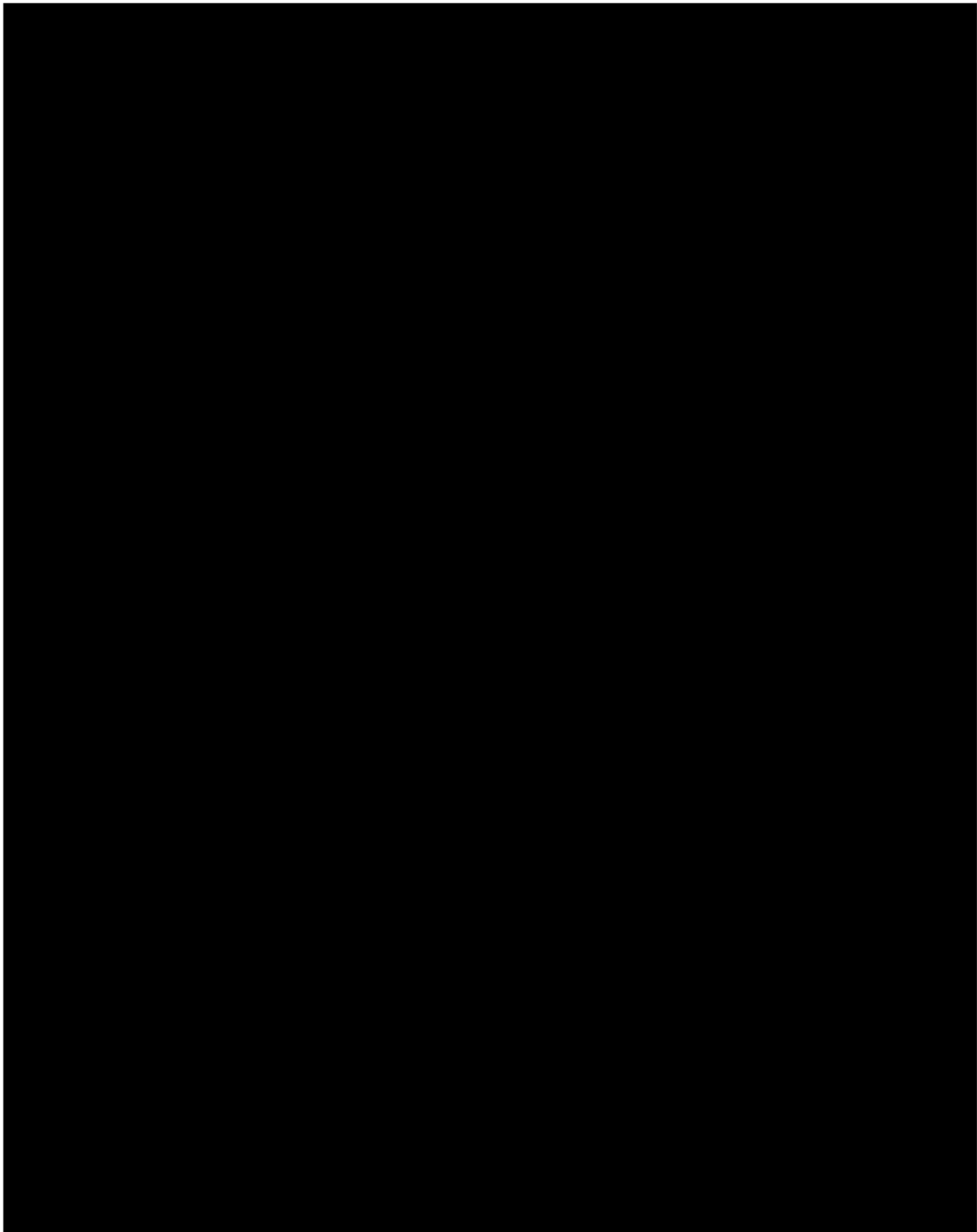
The evidence accumulated during this investigation does not show any statements by (b) (6) to Army or DoD officials regarding the existence of classified information in (b) (6) book after (b) (6) 22 December 2010 interview.

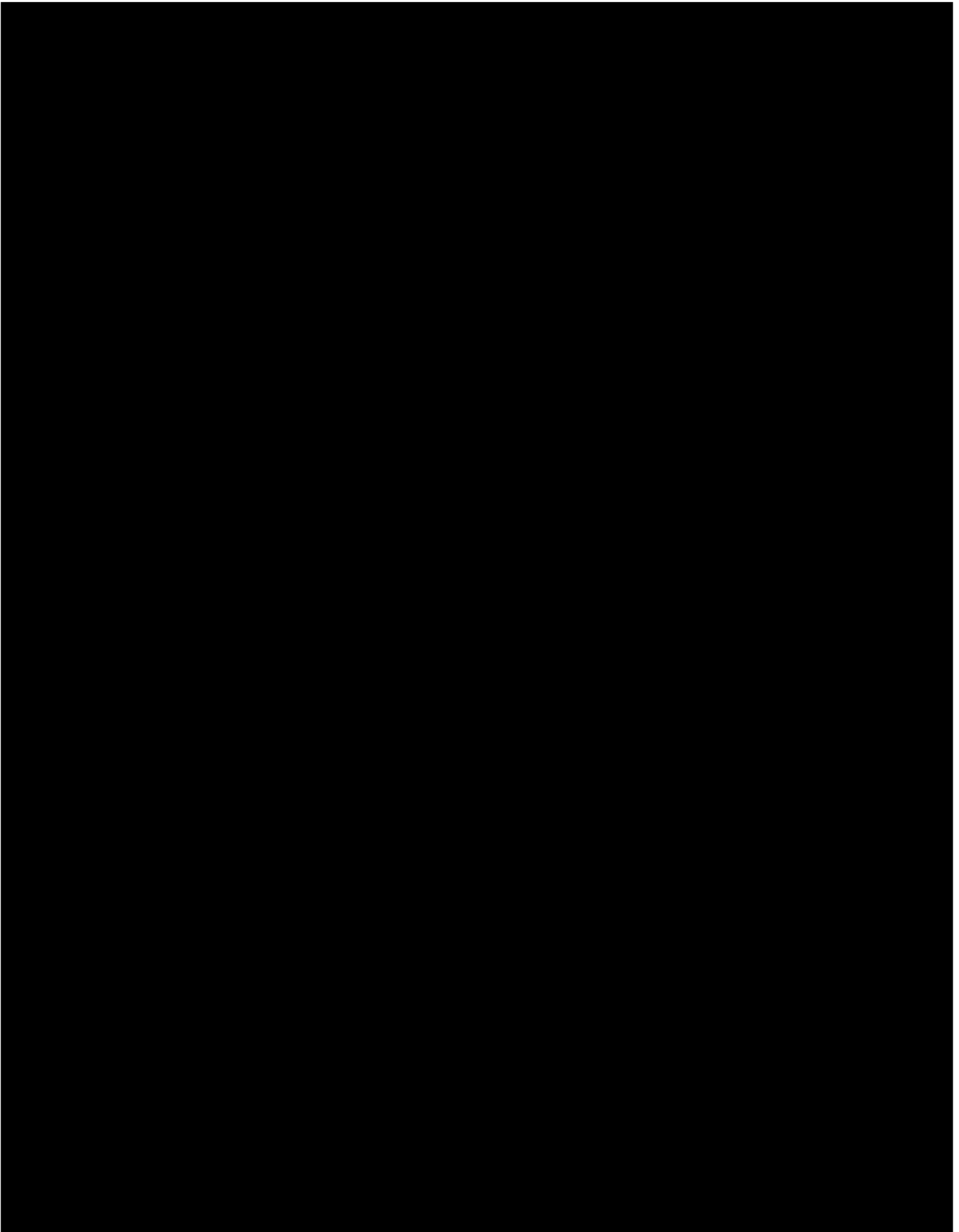
ISSUE 15: PROVIDE A DETAILED HISTORY OF (b) (6) ACTIVITIES INVOLVING THE RESEARCH, WRITING, EDITING, AND EFFORTS TO PUBLISH (b) (6) BOOK. BE SURE TO ADDRESS THE FOLLOWING:











ISSUE 15E: TO WHOM DID (b) (6) PROVIDE COPIES OF (b) (6) MANUSCRIPT (OR PORTIONS THEREOF) FOR REVIEW OR ADVICE PRIOR TO OR AFTER SUBMISSION TO (b) (6) PUBLISHER? WHAT IS THE DISPOSITION OF THESE REVIEW/COMMENT MANUSCRIPTS OR PORTIONS OF MANUSCRIPTS?

FINDING 15E: (b) (6) provided copies of (b) (6) manuscript (or portions thereof) to the following persons for review or advice prior to or after (b) (6) submission of the manuscript to (b) (6) publisher. The current disposition of those copies is indicated in parenthesis.

- (b) (6) (portions / final copy; disposition unknown)
- (b) (6) (portions / final copy; currently maintains an electronic copy and possibly some written materials);
- (b) (6) (may have a copy; disposition unknown)
- (b) (6) (final copy; turned in to DIA in June or July 2010);
- (b) (6) (final copy; currently maintains un-redacted copy at home)
- (b) (6) (portion; no longer in possession of materials);
- (b) (6) (portion; no longer in possession of materials)
- (b) (6) (final copy; returned to (b) (6) in December 2009 or January 2010);
- (b) (6) (portions / final copy; currently in safe at USASOC);
- (b) (6) (portion; disposition unknown);
- (b) (6) (portion; disposition unknown);
- (b) (6) "at (b) (6) (e-mailed – no response)
- (b) (6) (final copy / disposition unknown)

ANALYSIS 15E:

(b) (6): In (b) (6) IO interview, (b) (6) equivocated regarding the identity of the individuals to whom (b) (6) provided copies of (b) (6) manuscript, other than (b) (6) and (b) (6) stating: "I shared it with folks I thought should have it. I'd have to go back and check. I have no idea" (Exhibit 71, p. 148). However, in an e-mail, dated 20 September 2009, (b) (6) provided "part 2" of (b) (6) "draft epilogue" to the following individuals to review: (b) (6)

(b) (6)

(b) (6) (Exhibit 198). In addition, in an e-mail dated 11 August 2010, (b) (6) advised (b) (6) in the HQDA Office of the Chief of Public Affairs that (b) (6) publisher was sending (b) (6) a hard copy of the book (Exhibit 92).

(b) (6): On 29 October 2009, (b) (6), who is an editor with (b) (6), sent (b) (6) and (b) (6) an e-mail, in which (b) (6) indicated that (b) (6) (Exhibit 169). As a result, it is clear that (b) (6) provided (b) (6) publisher with a copy of the manuscript before either (b) (6) or (b) (6) had completed their respective reviews. The disposition of this copy of the manuscript, as well as the disposition of the copy of the manuscript that (b) (6) provided to (b) (6) publisher in February 2010, is unknown because officials from (b) (6) declined to cooperate with this investigation (Exhibit 201).

(b) (6): In (b) (6) IO interview, (b) (6) testified that she and (b) (6) produced a proposal for a book, which consisted of a sample chapter and a synopsis of each of the subsequent chapters¹⁵ (Exhibit 130, p. 7). Their agent, (b) (6) then submitted their proposal to (b) (6) (Exhibit 130, p. 7; Exhibit 202). (b) (6) also testified that she sent the final manuscript to either (b) (6) or their agent (Exhibit 130, pp. 30, 32). (b) (6) did not send the final manuscript directly to the publisher because (b) (6) was responsible for doing so¹⁶ (Exhibit 130, p. 30). Finally, (b) (6) testified that she made corrections to the original manuscript based on the publisher's editorial comments, and that she sent the revised copy of the manuscript back to them¹⁷ (Exhibit 130, p. 31). (b) (6) still has the original manuscript on her home computer, and she still has "boxes" of written material related to the book, including her "reference materials and everything that's the basis for each chapter" (Exhibit 130, pp. 31-32).

(b) (6): In (b) (6) sworn statement, (b) (6) literary agent, (b) (6), indicated that (b) (6) sent her "a couple of pages [of (b) (6)]

¹³ (b) (2)

¹⁴ The working title of (b) (2) book was (b) (6) (Exhibit 121).

¹⁵ (b) (6) testified that there were 27 chapters at the time of the proposal (Exhibit 130, p. 7).

¹⁶ (b) (6) believes (b) (6) sent the manuscript to the publisher by e-mail the day before it was due (Exhibit 130, pp. 30, 32-33).

¹⁷ (b) (6) testified that she received the publisher's editorial comments and submitted her revised copies through an e-mail account she was given by her previous employer, (b) (6) (Exhibit 130, pp. 31-32). (b) (6) also testified that she "switched computers" after editing the manuscript. Therefore, she does not have a record of the changes that she made (Exhibit 130, pp. 31-32).